

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

WILLIAM BOGGS,)
Petitioner,) Case No. 7:07CV00389
v.)
OPINION AND ORDER
UNITED STATES OF AMERICA,) By: James P. Jones
Respondent.) Chief United States District Judge

William Boggs, Petitioner Pro Se.

This matter is before the court upon the petitioner's Notice of Appeal, which he submitted in his criminal case, Case No. 2:01CR10045, on August 9, 2007, more than five years after final judgment. By order filed August 14, 2007, the court notified the petitioner of the court's intention to construe and address petitioner's Notice of Appeal as a Motion to Vacate, Set Aside or Correct Sentence, pursuant to 28 U.S.C.A. § 2255 (West 2006), unless the petitioner expressly objected within ten days to the court's intended construction of the motion. *See Castro v. United States*, 540 U.S. 375, 383 (2003) (requiring court to give petitioner opportunity to elect whether criminal motion be addressed as § 2255 motion). The petitioner has responded, clearly objecting to the court's construction of the submitted motion as a § 2255 motion. Based on petitioner's response, it is hereby **ORDERED** that the clerk

is hereby DIRECTED to remove the petitioner's submissions in this civil action (Dkt. Nos. 1 and 3) and to docket these pleadings in Case No. 2:01CR10045, respectively, as a Notice of Appeal and a Motion to Reopen the Time for Appeal, and that this civil action, conditionally filed pursuant to 28 U.S.C. § 2255, is DISMISSED without prejudice and stricken from the active docket of the court.

ENTER: September 6, 2007

/s/ JAMES P. JONES
Chief United States District Judge